

August 7, 2003

Secretary Marlene H. Dortch
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: WT Docket No. 03-128
Nationwide Programmatic Agreement Regarding the Section 106 National Historic
Preservation Act Review Process

Dear Secretary Dortch:

The Massachusetts Historical Commission (MHC), office of the State Historic Preservation Officer (SHPO) offers the following comments on the draft Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, WT Docket No. 03-128, which was released by the FCC on June 9, 2003 for public comment.

The MHC has reviewed a few thousand telecommunications installations in Massachusetts over the past several years, and thus has a deep knowledge of the types of installations that have had an effect on historic properties. While the MHC is supportive of the development of a nationwide programmatic agreement (PA) to streamline the Section 106 review process, we note a number of potential problems in the draft PA, and offer the following suggestions to improve the document.

Section II A - Definitions

The PA makes constructive references to the advantage for Applicants to use “qualified professionals experienced with National Historic Preservation Act and Section 106.” However, there is no definition of such “qualified professionals” in Section II A. The MHC recommends that a definition of “qualified professionals experienced with National Historic Preservation Act and Section 106” be added to this section and that the definition include reference to the Secretary of Interior’s Professional Qualifications Standards (48 FR 22716, Sept. 1983).

Section III A – Undertakings Excluded from Section 106 Review

General Comment: The introductory paragraph of this section states that “Applicants should retain documentation of their determination that an exclusion applies to an undertaking.” However, what is missing from this section is how the FCC, SHPO/THPO or any interested parties might obtain a copy of, and evaluate this documentation, in order to determine whether the Applicant is in compliance with the terms of the PA, and whether concerns should be presented to the FCC pursuant to Section XI of the PA. The MHC suggests that the following sentence be inserted after the second sentence of the introduction: “The Applicant shall make this documentation available to the FCC, SHPO/THPO or any interested party, upon their request.”

Section III A (4) and (5)

The MHC strongly objects to the use of 200 feet as the area of potential effect (APE) for the exclusions described in Section III A (4) and (5). In Massachusetts there are many commercial or industrial areas consisting of low-rise, sensitive new design less than 45 years old, within more than 200 feet of historic properties, that have not adversely affected the character and setting of nearby historic properties. In these cases, a new 400 foot tower would have a visual effect on historic properties.

In Massachusetts, there are many instances of historic properties located adjacent to transportation routes, including interstate highways and railroad corridors. Presently, the settings of these historic properties are screened from the transportation corridors by stands of trees. A new 400-foot tower constructed in the corridor would extend beyond the treetops and would have a visual effect on the historic property.

The MHC also believes that increasing the APE distance from 200 to 400 feet would not be an adequate APE to exclude such towers from individual project review (as suggested in footnote 4). The MHC suggests that the guidelines for APE's that are detailed in Section VI B (2), i.e. a half-mile for towers that are 200 feet or less, and three-quarters of a mile for new towers that are between 200-400 feet tall, be used in sections III A (4) and (5) instead of a distance of only 200 feet.

If the FCC declines to make these changes, the MHC respectfully requests that Massachusetts be given an opportunity to "opt out" of both exclusions # 4 and 5.

Section VI B Definition of the Area of Potential Effects

The MHC strongly supports section VI B (2) (a) language that allows for consultation with the SHPO/THPO to establish the APE for specific projects. The MHC has used topography and current conditions to focus the APE as narrowly as necessary for each particular unique case.

The MHC supports the NCSHPO's recommendation in footnote 12 concerning towers that are more than 1,000 feet tall.

Section VI C Identification of Historic Properties

The MHC strongly disagrees with #4 in this section concerning locations that are to be deemed not sensitive for the presence of archaeological sites. In Massachusetts, the depth of previous disturbance cannot be limited to a depth of only two feet. Unmarked human burials and other types of archaeological sites can be found between 2 – 10 feet below grade (and sometimes even deeper if the site has been subjected to filling operations in the past). Construction of footings or appurtenant facilities in areas that were previously disturbed to only 2 feet below grade would have an adverse effect on the more deeply buried archaeological deposits and certainly would not be an appropriate

treatment of a burial site. Likewise, the proposed limit of previous disturbance to only 6 inches below the proposed new construction could have an impact on lower archaeological deposits, due to compaction and making the site inaccessible for any future archaeological research. The MHC recommends that item (2) be deleted from this section (i.e. the six-inch phrase) and that item #1 be changed to “a previously disturbed depth determined in consultation with the State Historic Preservation Officer to no longer be considered archaeologically sensitive.”

Section VII Procedures

Section VII A (4) states that the SHPO/THPO “will immediately return it to the Applicant.” Under the Massachusetts Public Records Law and Regulations, the MHC will not be able to return any submittals, and will have to “opt out” of this requirement. Instead, the MHC will submit written comments to the Applicants describing any deficiencies in their submittal.

Section VII C (5) The MHC supports the Advisory Council’s recommendation in footnote 16. Replacement of the word “encourage” to the word “shall” will make this section more consistent with the Council’s regulations and how they are operationalized.

Thank you for your consideration of our comments on the draft nationwide PA. If you have any questions about these comments, please feel free to contact Brona Simon, Deputy State Historic Preservation Officer, or me, at 617-727-8470.

Sincerely,

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